IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC NO.404 OF 2008 WITH
MUKESH TIWARY @ MUKESH KUMAR TIWARY
VERSUS
STATE OF BIHAR THRU.D.G.P.&ORS
CR. WJC NO.265 OF 2008 AMIT KUMAR JAISWAL
VERSUS
THE STATE OF BIHAR & ORS
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2 21.7.2008. Heard learned counsel for the petitioners and learned Additional public prosecutor for the State of Bihar.

Petitioner, namely, Amit Kumar Jaiswal (in CrWJC No. 265 of 2008) has prayed for issuance of appropriate direction to the respondent- police officers not to harass them at the instance of respondent no.5, namely, Narayan Prasad and to release the motorcycle bearing registration no BR-04D, 5907 forcibly taken from the house in the night by the officer in charge of Chapra Town police station. He has also prayed for quashing of the FIR lodged by a constable Binay Kumar Singh (respondent no.6) of Accounts Section, Police Office, Chapra bearing Chapra Town ps case no. 227 of 2007 dated 29.8.2007 lodged for offences under sections 363/366 of the Penal code.

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It is submitted on behalf of the petitioner that action of the police is motivated and mala fide as the relevant case in which the petitioner has been implicated is filed by respondent no.6. He submits that pursuant to his application making grievance in regard to seizure of motor cycle, Chief Judicial Magistrate, Saran at Chapra had called for reports from the police and the District Transport Officer regarding ownership of the vehicle in question. The DTO

vide letter dated 21.9.2007 reported that the vehicle in question stands in the name of petitioner's father. He also submits that in course of pendency of this application, police has instituted another case bearing Chapra Sadar p.s. case no. 20 of 2008 for offences under sections 379 and 427 of the Penal Code.

It is submitted by the learned Addl. P.P. appearing for the State that the motorcycle as above had been used in kidnapping of minor daughter of respondent no.6 which is still traceless. In this case, petitioner and others are suspect.

After hearing the parties, this Court observes that submission of petitioner that the police on account of mala fide intention implicated him in aid with respondent no.5 is not very convincing. Furthermore, no substantive ground has been made out for quashing of the FIR of Chapra PS case no. 227 of 2007, as such, the prayer of the petitioner in this regard is refused.

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However, so far seizure of motorcycle is concerned, it would appear from the material on record that the minor daughter of respondent no.6 was kidnapped on 3.8.2007 but FIR to this effect was instituted on 29.8.2007. The motorcycle belonging to petitioner's father was seized on 21.8.2007 as it was suspected of being used in the kidnapping of the daughter of respondent no.6.Thus the date in which motorcycle was seized, no case was pending against the petitioner and as such the seizure of motorcycle was unauthorized and without sanction of law.

This court, directs that the CJM, Saran at Chapra would

release the motorcycle in question on taking adequate security and also Jimmanama that the same would be produced in court as and when required during trial.

In case of petitioner, namely, Mukesh Tiwary (in CrWJC No. 404 of 2008) similar prayer has been made for quashing of the FIR of Chapra Town P.S. case no. 227 of 2007 instituted for offences under sections 363 and 366 of the penal code on account of his being neighbour of petitioner, Amit Kumar Jaiswal.

In the facts of the case, prayer for quashing of the FIR of the aforesaid case is rejected as the petitioner has not made out any case for quashing of the same.

It would be open to the petitioners to represent before the senior police officers in respect of their grievances that Chapra Sadar p.s. case no. 20 of 2008 for offences under sections 379 and 427 of the penal code has been instituted against them on account of bias.

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Shashi. **(S.P.Singh,J).**